NO. 16418

IN THE

United States
Court of Appeals
For the Ninth Circuit

REX L. NEELY
Appellant

vs.

UNITED STATES OF AMERICA
Appellee

Appeal from the United States District Court
for the District of Arizona

BRIEF OF APPELLEE

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JURISDICTION

Appellee concurs with the authorities cited by appellant which establish jurisdiction in this Honorable Court to hear and to decide this appeal.

FACTS

During the years 1954 through 1956 the growing of cotton was subject to acreage controls by the Federal Government. The Secretary of Agriculture, pursuant to

the Agricultural Adjustment Act (7 USC 601 et seq.), was charged with the administration of the federal program. The Secretary, pursuant to the authority given to him (7 USC 610), placed the local administration of the program in the hands of the Agricultural Stabilization and Conservation County Committees, hereafter referred to as the ASC committee (7 CFR 7.3). Under the regulations of the Secretary of Agriculture, the county office manager of the ASC committees was charged with the day-to-day operation and administration of the various county offices (7 CFR 7.25, T 53-54).

The administrative procedures for handling the program as regards cotton were substantially the same for 1954 through 1956. A farmer was notified of his allotment by a Notice of Allotment (T 63); after the cotton crop was growing, the fields were measured to determine whether a farmer was planted within his allotment (T 92-93); the farmer then had the election, if he were overplanted, to destroy the excess or harvest the entire crop but pay a penalty equal to half the support price, that is a penalty of about 17½ cents per pound on short staple cotton (T 88).

Before a farmer could sell his cotton, he had to obtain from the ASC committee a marketing card. To be eligible for a marketing card, the farmer must have finally been measured as planted within his allotment or have paid the penalty on the excess (7 CFR 722.757 and 722.765).

If a farmer did not want to plant his allotment, the only way he could legally transfer it to another farmer was by means of reconstitution of the two farms into one unit — commonly called a combination by farmers. By this method the allotments were combined in one allotment representing the sum total of the former two (7 CFR 722.717 (h) (2)).

During each of the years 1954 through 1956 the appellant, a large farm operator in two Arizona counties, sought to obtain additional cotton allotment for his Pinal County, Arizona, operation. In each of the years in question, appellant paid the office manager of the Pinal County ASC office, Joe Short, a Government employee, substantial sums of money to obtain additional cotton allotment in Pinal County (Ex. 14A, 14B, 14C).

In 1954 appellant received a written lease purportedly signed by the owner (Ex. 15). This lease was delivered to appellant by Short who accepted appellant's check which was made out to him and not the purported owner of the land (T 131). Appellant also received a revised Notice of Allotment from Short showing the additional cotton allotment (T 143-144, Ex. 17C).

For the crop year 1955, appellant sought his additional allotment in late 1954 (T 336). Appellant again paid Joe Short for the additional allotment with a check payable to Short only, but the appellant received no lease and, according to his testimony, no revised Notice of Allotment showing the additional acreage (T 335, Ex. 14B). In the same crop year appellant also farmed in Maricopa County, but in this County, where he was not dealing with the office manager, he was required to form a combination, and in turn received a new Notice of Allotment for the total (T 337-338).

During the crop year 1955 appellant was measured as overplanted in Maricopa County and Pinal County. In Maricopa County appellant was refused a marketing card until he paid his penalty for the excess cotton (T 338). In Pinal County, appellant claims he did not know the actual amount of his overplant, but he did know he was overplanted (T 339). Appellant destroyed some short staple cotton and an unknown quantity of

The appellee states that a statement by the Supreme Court that the defendant's testimony must be considered, together with all the surrounding circumstances, is not dispositive of the issue. We believe his testimony must be considered if it is not contradicted in any way but, in fact, is supported by all the evidence in this case bearing on the question of intent. See *Forte v. United States* (D.C. Cir.), 94 Fed. (2d) 236.

Appellee, on page 10 of its brief, states:

> "The jury was entitled to view the above matter in another light. Even as they may view false statements as consciousness of guilt, they may also consider the destruction, suppression, or fabrication of evidence as giving rise to a presumption of guilt."

We know of no evidence in the record of false statements, or the destruction, suppression, or fabrication of evidence by the appellant, and the appellee points to none in its brief.

"With intent to influence his decision" are the words of the statute (Title 18, U.S.C.A., Section 201). Appellee cites *United States v. Labovitz,* 251 Fed. (2d) 393. That case definitely holds that criminal intent is an essential element of the crime of bribery. On page 394 of *Labovitz, supra,* it is said:

> "The bribery statute itself deals explicitly with the element of criminal intent, making it a crime to offer money to any person acting for the United States 'with intent to influence his decision or action on any * * * matter * * * before him in his official capacity * * * or to induce him to do or omit to do any act in violation of his lawful duty.* * *' 18 U.S.C. Sec. 201. For present purposes the important point is that the statute states the essential criminal intent in alternatives. On the face of the statute, either an intention to influence official behavior or an intention to induce unlawful action will supply the culpability which the statute requires."

The checks given Short by appellant were not given with intent to influence Short's official behavior or to induce unlawful action on the part of Short. Of course, Short knew the action was wrong *but defendant did not know it* until long after the December, 1955, check for $1,750.00 was given Short. This does not show knowledge or corrupt intent of appellant at the time or times any of the three checks were given Short. We again stress that appellant's dealings with Short were not, insofar as appellant was concerned, in any official capacity.

We again respectfully submit that this case should be reversed and a judgment of acquittal ordered.

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